Persons seeking to have nuisances enjoined usually rely on the maxim *"Sic utere tuo ut alienum non laedas"*, which is at the basis of all suits for injunctions on account of nuisances. *Ross* v. *Butler*, 19 N. J. Eq. 294, 97 Am. Dec. 654; *Rouse* v. *Martin*, *supra*. But the interests of the public often require the application of the converse, which is equally sound, that the plaintiff is without this remedy if, for example, he deliberately settles in that part of a town already devoted to offensive but lawful enterprises; otherwise, many manufactories and other industries essential to the industrial development of a city could be summarily stopped. *Gilbert* v. *Showerman*, 23 Mich. 448. Similar reasons were given in denying an injunction against a cotton ginning company, the court declaring the interests of the public paramount to those of the plaintiff. *Strieber* v. *Ward* (Tex. Civ. App.), 196 S. W. 720.

WITNESSES—COMPETENCY OF CHILDREN—SENSE OF MORAL RESPONSIBILITY. —Plaintiff offered as a witness a nine year old boy. Although convinced of the boy's mental capacity, the trial judge found him incompetent, on the ground that he showed a lack of moral responsibility. An exception was taken to the exclusion of the testimony. *Held*, exception overruled. *Goy* v. *Director General of Railroads* (N. H.), 111 Atl. 855.

Several early cases held that children under nine years of age were incompetent to testify. *Rex* v. *Travers*, 2 Str. 700; *Rex* v. *Dunnel*, 1 East P. C. 442. It is now well settled that no precise minimum age can be fixed at which children shall be excluded from testifying. *State* v. *Tolla*, 72 N. J. L. 515, 62 Atl. 675, 3 L. R. A. (N. S.) 523.

The mental capacity required consists of ability to receive just impressions of facts to which the testimony relates and ability to relate such facts correctly. *People* v. *Bernal*, 10 Cal. 66; *Wade* v. *State*, 50 Ala. 164. A further requirement is the appreciation of the nature and obligation of an oath. *McGuff* v. *State*, 88 Ala. 147, 7 So. 35, 16 Am. St. Rep. 25; *Flanagin* v. *State*, 25 Ark. 92. This does not imply, however, that the child must be able to define the word "oath", or understand the legal nature of an oath, but an adequate sense of the impropriety of falsehood is all that is necessary. *Williams* v. *United States*, 3 App. D. C. 335; *State* v. *Meyer*, 135 Iowa 507, 113 N. W. 322, 124 Am. St. Rep. 291 and note.

There must also be, by the great weight of authority, a sense of moral responsibility,—a consciousness of the duty to speak the truth. *Wheeler* v. *U. S.*, 159 U. S. 523; *Commonwealth* v. *Robinson*, 165 Mass. 426, 43 N. E. 121; WIGMORE, EVIDENCE, § 506. This is the ruling in the instant case. However, it is generally held, there need not be clear beliefs with respect to the certainty and manner of punishment after death. *Moore* v. *State*, 79 Ga. 498, 5 S. E. 51; *Commonwealth* v. *Furman*, 211 Pa. 549, 60 Atl. 1089, 107 Am. St. Rep. 594. It is enough if the child understands that he will be punished on earth, although he knows nothing of punishment after death. *Sancedo* v. *State* (Tex. Cr. App.), 69 S. W. 142.

The discretion of the trial court should be allowed to control in de-

termining whether a given child is competent. *Commonwealth* v. *Lynes*, 142 Mass. 577, 8 N. E. 408. Wigmore suggests that it would be much more practical to omit the requirement of moral sense among other requirements, and take the child's story for what it may be worth. GREENLEAF, EVIDENCE, 16th ed., § 370 (d); WIGMORE, EVIDENCE, § 509. And see *Hughes* v. *Detroit, etc., R. Co.*, 65 Mich. 10, 31 N. W. 603, in which Campbell, C. J., delivering the opinion of the court, advocates changing the present rule so as to allow children of tender years to be put upon the stand without the administering of an oath. But the well settled rule in most jurisdictions is that a child cannot be examined without being sworn. *State* v. *Tom*, 8 Ore. 177; *Hodd* v. *City of Tacoma*, 45 Wash. 436, 88 Pac. 842; see note 14 Ann. Cas. 7.

The instant case is supported by the great weight of authority, but Wigmore's eminently reasonable and practical suggestion will undoubtedly gain favor with the courts.